

1 McGREGOR W. SCOTT
United States Attorney

2 PAUL S. HAM
3 Trial Attorney, Tax Division
4 United States Department of Justice
5 P.O. Box 683, Ben Franklin Station
6 Washington, DC 20044-0683
Telephone: (202) 307-6421
Facsimile: (202) 307-0054

Attorneys for the United States of America

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 CREEKSIDE VINEYARDS, a California
11 Limited Partnership, et al.,

12 Plaintiff,

13 v.

14 THE McCARTY COMPANY, INC.,
15 PATRICK McCARTY, et al.,

16 Defendants.

17 And related cross claims

18 MID VALLEY AGRICULTURAL
19 SERVICES, INC; BG AGRI SALES &
20 SERVICE, INC.

21 Plaintiff,

22 v.

23 PATRICK N. McCARTY; THE McCARTY
24 COMPANY, a California Corporation;
McCARTY PARTNERS, a California
25 Corporation; LITTLE JOHN CREEK; et al.,

26 Defendants.

27 ////

Civil No.

[San Joaquin County - Stockton Branch
- Superior Court Case No. CV013504]

Consolidated with CV013505,
CV014013, CV014134, CV014137,
CV014355, CV014565, CV014566,
CV014649, CV014828, CV015357,
CV015358, CV015644, CV015645,
CV015653, SV231109, SV0233068,
SV233069]

NOTICE OF REMOVAL

[San Joaquin County - Stockton Branch
- Superior Court Case No. CV013489]

1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN
2 DISTRICT OF CALIFORNIA:

3 PLEASE TAKE NOTICE that the United States of America, by undersigned counsel, hereby
4 removes the above-captioned actions from the San Joaquin County - Stockton Branch - California
5 Superior Court ("Superior Court") to the United States District Court for the Eastern District of
6 California pursuant to 28 U.S.C. § 1444.

7 The grounds for removal are as follows:

8 1. On December 17, 2004, Wells Fargo issued a Demand for Third Party Claim, pursuant to
9 Cal. Civ. Proc. Code § 720.510, to the United States. See Exhibit A (copy of Demand for Third Party
10 Claim with attachments).

11 2. The above-captioned cases filed with the Superior Court involve the party litigants'
12 alleged interests in \$900,000 ("funds at issue") which was allegedly deposited on behalf of Patrick N.
13 McCarty with the Superior Court. See Exhibit B (copy of cover stating that the funds at issue were
14 deposited). The proceedings with the Superior Court apparently involve numerous causes of action,
15 including but not limited to breach of contract and corporate governance disputes. Upon information and
16 belief, the United States believes that the Superior Court has ruled that Well Fargo has a valid, perfected
17 interest to the funds at issue and that the Superior Court may cause the entire amount to be distributed to
18 Wells Fargo.

19 3. The United States has numerous federal tax liens filed against both Patrick N. McCarty
20 and the McCarty Company, who are named parties in the above-captioned cases. Pursuant to 26 U.S.C.
21 Section 6321, the United States' liens attach to all property and rights to property, whether real or
22 personal, belonging to either Patrick N. McCarty or the McCarty Company, including any interest held by
23 these parties to the funds at issue.

24 4. The United States removes these cases to the district court to adjudicate the party
25 litigants' priorities to the \$900,000, including the United States' claim based upon its federal tax liens.

26 5. Under 28 U.S.C. § 2410(b), service upon the United States is to be made upon the United
27 States Attorney for the district in which the action is brought *and* the Attorney General of the United

1 States at Washington, District of Columbia. See Labry v. I.R..S., 940 F.Supp. 148, 149-50 (E.D. La.
2 1996); U.S. v. Rockland Trust Co., 860 F.Supp. 895, 897 n.3 (D. Mass. 1994). These cases were
3 originally brought in San Joaquin County, California; therefore, the United States Attorney's Office for
4 the Eastern District of California should have been served. Plaintiff served the United States Attorney's
5 Office for the Eastern District of California but did not serve the United States Attorney General. See
6 Exhibit A (Proof of Service attached to Demand for Third Party Claim).

7 6. Since proper service has not been effected upon the United States under 28 U.S.C. §
8 2410, the 30-day time limit under 28 U.S.C. § 1446(b) has not been triggered. See Murphy Brothers, Inc.
9 v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 347-348 (1999) ("Accordingly, we hold that a named
10 defendant's time to remove is triggered by simultaneous service of the summons and complaint, . . . but
11 not by mere receipt of the complaint unattended by any formal service."). The United States construes
12 the Demand for Third Party Claim as being a complaint for the purpose of determining proper service.

13 7. Therefore, pursuant to 28 U.S.C. § 1444, the United States may remove this civil action as
14 of right to this Court.

15
16 DATED this 14th day of January, 2005.

17
18 MCGREGOR W. SCOTT
19 United States Attorney

20 /s/ - Paul Ham
21 PAUL S. HAM
22 Trial Attorney, Tax Division
23 U.S. Department of Justice
24 P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 307-6421
Facsimile: (202) 307-0054

25 Attorneys for the United States
26
27